

APPEAL NO. 041024
FILED JUNE 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have disability. The claimant appealed these determinations on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury and had disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Whenever there is conflicting evidence, credibility is a factor both as to testimony and medical evidence. In the instant case, the hearing officer did not find the claimant to be credible in her testimony. The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury and disability determinations are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PETROLEUM CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH LALLO
4550 DACOMA STREET
HOUSTON, TEXAS 77092-8614.**

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge